

In the Matter of Merchant Mariner's Document Z-502666
Issued to: FLORENTINO LOBATO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

377

FLORENTINO LOBATO

On June 24, 1949, an Examiner of the United States Coast Guard entered an order revoking Merchant Mariner's Document Z-502666 held by Florentino Lobato, upon a plea guilty to a charge of misconduct, supported by a specification alleging assault and battery with a dangerous weapon, i.e., a knife, upon Harry Weldon, an oiler and fellow crew member while employed aboard the SS JULIEN POYDRAS on February 12, 1949, the vessel then being at sea.

Appellant, although fully advised by the Examiner as to his right to counsel, impliedly waived such right by his failure to indicate his desire for counsel or for an adjournment of hearing until he secured proper counsel. Appellant pleaded guilty to the charge of misconduct and the supporting specification alleging assault and battery with a dangerous weapon. In mitigation of his offense, the Appellant recited the circumstances which immediately preceded his attack upon his fellow crew member, Weldon.

The Investigating Officer described the results of his investigation of the complaint. At the conclusion of the Investigating Officer's report, the Examiner found the charge and specification proved by the Appellant's plea and entered an order of revocation.

From that order this appeal has been taken, and it is contended by the Appellant, through counsel, in his notice of appeal, that:

1. The person charged was not represented by counsel although he desired legal representation.
2. The person charged did not fully comprehend the nature of the charges or the nature of the pleading involved.
3. The person charged did not fully disclose the mitigating circumstances surrounding the alleged assault.
4. The punishment meted out for the alleged offense is excessive.
5. Further grounds will be set forth upon receipt of a transcript of the minutes of the hearing.

OPINION

The Appellant, through counsel, in his notice of appeal, sets forth five grounds upon which he feels the decision of the Examiner should either be set aside or mitigated but he failed in his memorandum in support of such appeal to elaborate upon the basis for the first three grounds. However, in full justice to the Appellant, I will treat with each of these grounds. Firstly, as to the contention that he was not represented by counsel although he desired legal representation. The record indicates that at the time he was served, the Appellant was advised by the Investigating Officer of his right to counsel. It also indicates that the Examiner explained, at length, the legal rights afforded under matters of this nature to persons charged. The record does not indicate that the Appellant failed to apprehend his basic rights, nor does it indicate that the Appellant at any time indicated an affirmative desire to have counsel. Under these circumstances, I cannot but conclude that the Appellant, by his failure to take affirmative action, impliedly waived his right to counsel.

Secondly, as to the contention that the Appellant did not comprehend the nature of the charges or the nature of the pleading involved. The record indicates that both the Investigating Officer and the Examiner explained the nature of the charges, as well as the nature of the pleading involved. There was no question that the Appellant speaks and understands the English language for the record clearly indicates that the Examiner made a specific inquiry

on this point.

Thirdly, as to the contention that Appellant did not fully disclose the mitigating circumstances surrounding the alleged assault. The record indicates that the Appellant was afforded full opportunity to furnish the Examiner with all of the details incident to the offense and that the Appellant, aided by the questions of the Examiner, furnished a complete picture of what preceded the assault, the nature of the assault, and what followed the assault. The memorandum in support of the appeal adds nothing to the facts as disclosed by the Appellant at his hearing.

I have carefully scrutinized the record to learn whether the Appellant had even the barest legal justification for his assault upon Weldon. This scrutiny reveals that the Appellant, a fellow crew member and not a superior watch officer, went out of his way to criticize Weldon in the presence of others. That this criticism was vituperative there appears to be no doubt. A scuffle ensued in which the Appellant was badly beaten. Sometime thereafter, the Appellant went to his quarters and secured a pocket knife. He then proceeded to Weldon's quarters and stabbed Weldon with the knife. There is no element of self defense in the Appellant's action. The period of danger of further injury from Weldon's assault was over.

There was a definite "cooling-off" period between the end of the fight with Weldon and the time when he attacked Weldon with the knife.

I am fully cognizant of the fact that individuals of Mexican extraction and temperament react more violently to personal affronts or injury than do individuals of other origins. I am also cognizant of the possibility that the Appellant may have believed that he was justified, under the self-defense theory, to inflict bodily harm upon Weldon with his knife. However, after giving the Appellant the full benefit of these considerations, I must come to the conclusion that the Appellant's action in assaulting his shipmate with a knife with intent to do bodily harm indicates clearly that the Appellant does not possess the requisite temperament to insure the safety of either the vessel or the crew members of any vessel of the United States upon which he may be employed in the future.

Under the circumstances, I do not believe that the administrative punishment in this case is excessive and I find nothing to warrant my intervening in this case.

CONCLUSION AND ORDER

It is ordered and directed that the decision and order of the Coast Guard dated June 24, 1949, should be, and it is AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 2nd day of Sept, 1949.

***** END OF DECISION NO. 377 *****

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